

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Southern District of Texas, Houston Division
Name (under which you were convicted): Walter Keitric Freeman		Docket or Case No.: 4:12-cr-00479-2
Place of Confinement: FCI Bastrop, P.O. Box 1010 Bastrop, TX 78602	Prisoner No.: 19178-379	
<div style="display: flex; justify-content: space-between;"> UNITED STATES OF AMERICA Movant (include name under which convicted) </div> <div style="display: flex; justify-content: center; align-items: center; margin-top: 10px;"> V. WALTER KEITRIC FREEMAN </div>		

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
Southern District of Texas
Houston Division

(b) Criminal docket or case number (if you know): 4:12-cr-00479-2

2. (a) Date of the judgment of conviction (if you know): 7/15/2013

(b) Date of sentencing: 7/10/2013

3. Length of sentence: 177 Months

4. Nature of crime (all counts):

Count 1 charged Freeman with Conspiracy to Interfere with Commerce by Robbery, in violation of 18 U.S.C. § 1951(a);
Count 4 charged Freeman with Interference with Interstate Commerce by Robbery, in violation of 18 U.S.C. § 1951(a); and
Count 5 charged Freeman with Discharging a Firearm During a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii).

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

Guilty on Counts 1 and 5.

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

- (a) Name of court: United States Court of Appeals for the Fifth Circuit
- (b) Docket or case number (if you know): No. 13-20405
- (c) Result: Affirmed
- (d) Date of result (if you know): 10/16/2014
- (e) Citation to the case (if you know): United States v. Freeman, (No. 13-20405) (5th Cir. October 16, 2014)
- (f) Grounds raised:
- 1) Freeman's waiver of his right to appeal was involuntary and unknowing; and
- 2) the District Court erred by enhancing Freeman's sentence for a financial institution and for a victim sustaining serious bodily injury.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised:
- N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know):

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Pretrial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Pretrial counsel's failure to:

- (1) properly communicate with Freeman and inform him of the relevant circumstances and likely consequences of pleading guilty as opposed to proceeding to trial;
- (2) conduct an adequate and independent pretrial investigation;
- (3) file any substantive pretrial motion to put the government's case to an adversarial test; and
- (4) negotiate a favorable plea agreement with the government deprived him of effective assistance of counsel at pretrial and in the plea context of the proceedings.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are generally not raised on direct appeal, but rather are properly raised in a 28 U.S.C. § 2255 proceeding.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Ineffective Assistance of Sentencing Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Sentencing counsel's failure to:

- (1) review, discuss and explain the Presentence Report ("PSR") to Freeman;
- (2) file a memorandum in mitigation of punishment on behalf of Freeman; and
- (3) object to Freeman's sentence being substantively unreasonable.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are generally not raised on direct appeal, but they are properly raised in a 28 U.S.C. § 2255 proceeding.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND THREE: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:
Kirby J. Taylor, 4810 Caroline, Houston, TX 77004 & Michael J. Edwards, II, P. O. Box 1773, Cypress, TX 77429
- (b) At the arraignment and plea:
Kirby J. Taylor, 4810 Caroline, Houston, TX 77004 & Michael J. Edwards, II, P. O. Box 1773, Cypress, TX 77429
- (c) At the trial:
Kirby J. Taylor, 4810 Caroline, Houston, TX 77004 & Michael J. Edwards, II, P. O. Box 1773, Cypress, TX 77429
- (d) At sentencing:
Kirby J. Taylor, 4810 Caroline, Houston, TX 77004 & Michael J. Edwards, II, P. O. Box 1773, Cypress, TX 77429
- (e) On appeal:
D. Craig Hughes, 7322 Southwest Freeway, Suite 1100, Houston, TX 77074
- (f) In any post-conviction proceeding:
N/A
- (g) On appeal from any ruling against you in a post-conviction proceeding:
N/A
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
N/A
- (b) Give the date the other sentence was imposed:
- (c) Give the length of the other sentence: N/A
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*
N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Freeman respectfully requests that the Court grant the following relief:

Vacate his conviction and sentence to start anew; alternatively, grant an Evidentiary hearing to further prove his grounds set forth above, resolve facts in dispute, expand an incomplete record or any other relief to which this Court deems that he may be entitled.

LAW OFFICES OF D. CRAIG HUGHES

/s/ D. CRAIG HUGHES

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